(56)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO. 2746 OF 1999

PETITIONER — Shiv Prasad Patel,
S/o. Shri Mithailal, Aged about 46 years,
R/o. Krishnnagar, Belgahna,
Tahsil Kota, Distt. Bilaspur

Versus

RESPONDENTS

1. Chetram Gond,
S/o. Shri Jairam Gond,
R/o. Village Khondri,
Tahsil Gourela, Distt. Bilaspur (M.P.)

2. Commissioner,
Worksmen Compensation,
Labour Court, Bilaspur (MP)

Present :

Mr. Sanjay K. Agrawal, learned counsel for the petitioner.

ORAL ORDER
(Passed on 8th December, 2005)

The Workmen's Compensation Act, 1923 (for short the 'Act') is enacted with a laudable social welfare objective that the victims of accident should receive compensation in a summary proceeding to be conducted by the Commissioner without any unreasonable delay. But, the dispute brought before the Court would reveal that the victim of the accident notwithstanding the lapse of more than seven years has not received the compensation awarded by the Commissioner in this litigative process. The circumstance, therefore, should pain the conscience of the Court.

(2) The first respondent herein claims to be an employee of the petitioner- employer. The first respondent filed an application before the second respondent-Commissioner claiming compensation of Rs. 13,8,530/- on account of having sustained certain grievous injuries in an accident occurred on 04.04.98 in the course of employment. It was stated by the first respondent that he was employed as a driver of truck bearing registration No. MBS-6355 owned by the petitioner on monthly salary of Rs. 1500/- and daily allowance at the rate of Rs. 20/-. According to the first respondent, he was employed on 25.11.97 and while he was serving as driver, on 04.04.98 the boulders loaded in the truck were required to be unloaded in Sandri Bandh. Since it was late night, he parked the truck near village Kukdur, put off the engine keeping the truck in gear and while he was putting stopper the truck rolled back causing grievous injuries to the first respondent.

(3) The Commissioner on receipt of the claim petition caused notice to the petitioner herein by registered post acknowledgement due thrice. All the three notices have been returned unserved with a postal Shira "unclaimed". In the circumstance, the Commissioner proceeded to conduct enquiry ex-parte and on appreciation of oral and documentary evidence passed the order on 31st December 1998.

(4) After the Commissioner passed the order, the petitioner moved an application under Order 9 Rule 13 of the CPC to set aside the award on the ground that he had no notice of the claim petition filed by the first respondent and the proceedings initiated by the Commissioner. The Commissioner having opined that the notices sent by him were not claimed by the petitioner notwithstanding the intimation to him dismissed

the application by order dated 20/05/99. The petitioner being aggrieved by the above order of the Commissioner dated 20/05/99 has preferred this Writ Petition under Articles 226 and 227 of the Constitution of India.

(5) I have heard learned counsel for the parties.

(6) It was strenuously contended that the facts borne out from the records would go to show that the petitioner was not served with notice. It was also contended that the Commissioner is bound by the provisions of order 5 of CPC as provided under Rule 41 of the Workmen's Compensation Rules 1924 (for short 'the Rules'). Elaborating the above contention, it was contended that in terms of the deleted Rule 19-A of Order 5 of CPC, the Commissioner ought to have simultaneously issued summons for service in the manner provided in Rules 9 to19 (both inclusive), while directing notice by registered post acknowledgement due and since that procedure was not adhered to by the Commissioner, it could not be said that the notice issued by the Commissioner to the petitioner was in order and in accordance with law and only on that ground, the Commissioner ought to have allowed the application of the petitioner filed under Order 9 Rule 13 of CPC and set aside the award dated 31/12/98 and given an opportunity to the petitioner to contest the claim of the first respondent-employee. Learned counsel would also place certain decisions interpreting the provisions of deleted rule 19-A of Order 5 of CPC. I do not think it necessary to refer to those decisions, because, they have no bearing in the decision-making in the instant case. Suffice it to state that if the petitioner notwithstanding intimation of the notices sent by the Commissioner, at his peril, chose not to receive the notices he

should own the legal consequences of that lapse and he should not be heard to complain. Rule 41 of the Rules reads as follows :

> **41. Certain provisions of Code of Civil Procedure, 1908, to apply.**-Save as otherwise expressly provided in the Act or these Rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, Rules 9 to 13 and 15 to 30: Order IX; Order XIII, Rules 3 to10; Order XVI, Rules 2 to 21; Order XVII; and Order XXIII, Rules 1 and 2, shall apply to proceedings before Commissioners, in so far as they may be applicable thereto:
>
> Provided that :-
>
> (a) for the purpose of facilitating the application of the said provisions, the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him;
>
> (b) the Commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if he is satisfied that the interests of the parties will not thereby be prejudiced.

(7) The provisions of Rule 41 itself in unmistakable terms provide that the Commissioner may for sufficient reasons proceed otherwise than in accordance with the provisions of the CPC to which reference is made in the first part of it if he is satisfied that the interest of the parties will not be prejudiced. By no stretch of imagination, it could be said that appraising the affected by the mode of service of notice adopted by the Commissioner in the instant case was something irrational and unknown mode of service. Be that as it may, there is no need for the Court to dilate on this aspect, because, not only Rule 41 confers such power on the Commissioner but even substantive provisions of the Act themselves envisage notice by registered post acknowledgement due. For instance

Section 10 A envisages service of notice on the employer by registered post. In the instant case postal endorsement made while returning covers to the Commissioner reads: "not claimed". This endorsement is of significance and of importance to the decision-making. The endorsement "not claimed" would certainly presupposes that notwithstanding intimation of the arrival of the notices at the post office, the addressee did not bother to receive the registered articles. The petitioner in his application filed under Order 9 Rule 13 of the CPC before the Commissioner or for that matter in the writ petition has not averred that the endorsement made by the post man is false; that the post man did not visited the residence of the petitioner or that though he visit the residence and gave intimation to the family members, but, the family members did not in turn, communicate intimation to the petitioner. It is also not the case of the petitioner that when the three registered letters sent by the Commissioner reached the delivery post office, he was not in the station. It is expected and insisted a person who invokes the discretionary power of this Court under Article 226 of the Constitution should disclose all relevant facts and also state how injustice would be caused to him if the Court does not intervene in the matter. An applicant for the writ cannot sit on fence and base his case only on technicalities. It is now well-settled that mere violation of principles of natural justice would not be a justification for the Constitutional Court to step-in Article 226 of the Constitution unless it is shown that violation of principles of natural justice resulted in injustice. Furthermore, it needs to be noticed that in the application filed before the Commissioner under Order 9 Rule 13 of CPC or in this writ petition, the petitioner has not disclosed his stand with regard to the claim of the first respondent-employee. This cannot be the attitude of an applicant for the writ under

Article 226 of the Constitution. He should have stated his case on merit and sought intervention of the Court. Looking from any angle, this is not a case where this Court should, at this distance of time, step in and further stall payment of compensation to the unfortunate victim of accident.

(8) In the result, writ petition is dismissed, however, no costs.

Sd/-
Chief Justice

Brajesh